



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Housing (Scotland) Act 2006 section 121 and Regulation 9 the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/24/1829

Re: Property at 2/2 357 POLLOKSHAWS ROAD, GLASGOW, G41 1QT (“the Property”)

Parties:

Ms Kirsty Miler, 3/2, 5 MOIR STREET, GLASGOW, G1 5AE (“the Applicant”)

MRS PAULINE BURNS, 17 HATHAWAY DRIVE, GIFFNOCK, G46 7AE (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Landlord is in breach of her obligations in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulation 3”). The Respondent shall make payment to the Applicant in the sum of £2375 (TWO THOUSAND THREE HUNDRED AND SEVENTY FIVE POUNDS) STIRLING.

Background

1. The Tribunal received an application from the Applicant in terms of Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017 which was dated 22nd April 2024. The Application included a lease which detailed that a deposit of £950 had been paid.
2. On 16th July 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 16th August 2024 at 11.30am by teleconferencing. The letter also requested all written representations be submitted by 16th July 2024.

3. On 17th July 2024, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service and by post. This was evidenced by Certificate of Intimation dated 17th July 2024.
4. On 30th April 2024, the Applicant emailed the Housing and Property Chamber attaching information including confirmation that the deposit has not been lodged in a scheme and that the deposit was paid.
5. On 11th May 2024 the other tenant in the tenancy, Miss Rachael Liddell, emailed the Housing and Property Chamber to advise that these were content for the Applicant to deal with the application on behalf of both of them.

The Case Management Discussion

6. A CMD was held on 16th August 2024 at 11.30am by teleconferencing. The Applicant was present and represented herself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the hearing.
7. The Applicant said that the tenancy had ended on 1st April 2024. The Respondent had come to inspect the Property on both the 31st March 2024 and 1st April 2024. The Applicant emailed the Respondent on 4th April 2024 to request that the deposit be returned. The Applicant said that she was not contacted by the Respondent until 13th April 2024 to say that she would be sending the deposit to her from her own bank account (as opposed to claiming it from an approved deposit scheme). The Applicant said that she was dealing with this matter as she had dealt with all the administration of the Property rather than sharing it with her flatmate. She noted that her flatmate is very busy with personal matters and does not want to pursue this with her. The Tribunal noted that it would be a matter for the other tenant to raise an action to recover any funds due from the Applicant if she wished to do so as this type of case can only be raised once. The Applicant will discuss with her former flatmate the outcome of this case. The Applicant said that she had looked on a rental website and has seen that the Applicant had several other properties which she rents out.
8. The Tribunal was concerned that the Respondent did not attend or make representations prior to the CMD. This has meant that the Tribunal does not know if this is the standard practice of the Applicant or if she has changed her practices to ensure that she is compliant with the law in terms of lodging a deposit in an approved scheme. The Tribunal noted what was said by the Applicant that the Respondent may also have several other properties. It is not clear what the practice is for these tenancies. It is clear that the deposit was returned late and not from a deposit scheme. It is reasonable to conclude that it was not lodged in an approved deposit scheme.

Findings and reason for decision

9. A Private Rented Tenancy Agreement commenced 21st September 2022. The tenancy ended on 1st April 2024.

10. A deposit of £950 was paid to the Respondent by the Applicant.
11. The deposit was not lodged within an approved deposit scheme within 30 days of the lease starting. The deposit was returned to the Applicant from the Respondent's bank account. The deposit was returned 13 days after the end of the tenancy.
12. The Respondent has failed to comply with the regulations to ensure that the deposit was lodged in an appropriate scheme within 30 days from the start of the tenancy. The Respondent has not engaged with the Tribunal process to advise why this has happened and what steps have been taken to ensure that it will not happen again.

Decision

13. The Respondent has a duty under Regulation 3 to place the deposit in an approved scheme within the specified time but failed to do so. The Respondent did not engage with the Tribunal process to explain why the deposit was late and what steps had been taken to prevent such a situation happening again. The Tribunal took into account that the Respondent did return the deposit when determining the amount of the penalty. The Tribunal decided that a fair, just and proportionate sanction would be to order the Respondent to pay the Applicant two and a half times the amount of the deposit (£2375.00).

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Gabrielle Miller

16th August 2024

Legal Member/Chair

Date